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Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

MELVIN R. POLLARD,)	
)	
Plaintiff/Appellant,)	Trial Court No. 990905650
)	
vs.)	Appellate Court No. 20000167CA
)	
TRUCK INSURANCE EXCHANGE,)	PRIORITY 15
)	
Defendant/Appellee.)	

BRIEF OF DEFENDANT/APPELLEE TRUCK INSURANCE EXCHANGE

Appeal from the Third District Court, Salt Lake County,
Judge Anne M. Stirba

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Attorneys for Plaintiff/Appellant

FILED
Utah Court of Appeals

AUG 11 2000

Julia D'Alessandro
Clerk of the Court

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STATEMENT OF JURISDICTION

This Court has jurisdiction of this appeal pursuant to §78-2-2(j) of the Utah Code Annotated (1953).

STATEMENT OF ISSUE TO BE DECIDED

Was the trial court correct in granting summary judgment in favor of defendant Truck Insurance Exchange, based on the ruling that the clear and unambiguous language of the Commercial Auto Insurance Policy, issued to Climate Source and Pollard Mechanical, Inc., does not provide uninsured motorist coverage to Melvin R. Pollard with respect to his personal use of a motorcycle not described in the subject policy?

Standard of Review:

Mr. Pollard appeals entry of summary judgment in the District Court. Summary judgment is appropriate when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Rule 56, URCP (2000) This case involves the legal interpretation of an insurance contract, in light of applicable Utah statutes, and thus this court reviews the trial court's conclusions for correctness. AOK Lands, Inc. v. Shand, Morahan & Co., 860 P.2d 924, 925 (Utah 1993).

DETERMINATIVE STATUTES

1. Utah Code Annotated §41-12a-101, et. seq. (1997)

2. Utah Code Annotated §31A-22-301, et. seq. (1992)

STATEMENT OF THE CASE

A. Nature of the Case:

This is a declaratory judgment action to determine whether Mr. Pollard is entitled to claim uninsured motorist coverage, under the commercial auto policy issued to Climate Source and Pollard Mechanical, Inc., with respect to Mr. Pollard's use of a personal motorcycle, not described in the commercial policy, and in addition to the uninsured motorist coverage provided under the personal motor vehicle insurance policy Mr. Pollard had obtained on the motorcycle.

B. Course of Proceedings:

Once the Complaint and Answer were filed in the declaratory judgment action in the Third Judicial District Court, both parties moved for summary judgment with respect to the coverage issue. The parties appeared on December 10, 1999, for a hearing on the cross-motions for summary judgment before Judge Anne Stirba. On February 3, 2000, Judge Stirba issued a Memorandum Decision, granting summary judgment in favor of Truck Insurance Exchange, and denying Mr. Pollard's motion for summary judgment. The judge ruled that, under the clear and unambiguous language of the Commercial Auto Insurance Policy issued to Climate Source and Pollard Mechanical, Inc., Mr. Pollard is not entitled to uninsured motorist coverage

with respect to his personal use of the motorcycle not described in the policy. Based on the Memorandum Decision, Judge Stirba signed an Order, granting Truck Insurance Exchange's Motion for Summary Judgment and denying Mr. Pollard's Motion for Summary Judgment, on February 28, 2000.

On February 29, 2000, Mr. Pollard filed his Notice of Appeal, and on March 1, 2000, he filed an Amended Notice of Appeal.

STATEMENT OF FACTS

1. On or about July 14, 1997, Truck Insurance Exchange issued a Commercial Auto Insurance Policy, No. 76 65901339, to Climate Source and Pollard Mechanical, Inc. (See R. 24. Also, copies of the pertinent portions of that policy are included in the Addendum.)

2. On September 23, 1997, Melvin Pollard was involved in a motor vehicle accident, allegedly caused by an unidentified driver of a Jeep, while Mr. Pollard was operating a motorcycle. (R. 2)

3. The motorcycle Mr. Pollard was driving at the time of the above-described accident was owned personally by him, and not described in the declarations section of the Commercial Auto Insurance Policy issued by Truck Insurance Exchange to Climate Source and Pollard Mechanical, Inc. (R. 17 and 25)

4. At the time of the subject accident, Mr. Pollard had a personal motor vehicle liability insurance policy in effect on the

motorcycle involved, providing uninsured motorist coverage with respect to the injuries and damages he sustained in the accident. He made a claim under that personal policy, and the \$100,000 policy limit was paid to or on behalf of Mr. Pollard in settlement. (R. 34)

5. Mr. Pollard subsequently asserted a claim for uninsured motorist benefits under the Commercial Auto Insurance Policy issued to Climate Source and Pollard Mechanical, Inc. by Truck Insurance Exchange. (R. 3)

6. Under the "Business Auto Coverage Form" of the Commercial Auto Insurance Policy issued to Climate Source and Pollard Mechanical, Inc., Truck Insurance Exchange provided uninsured motorist coverage with respect to Mr. Pollard's use of any one of 14 vehicles owned by the companies and described in the policy. (R. 24-27)

7. The motorcycle which Mr. Pollard was driving at the time of the accident on September 23, 1997, is not one of the "autos" described in ITEM 3 of the declarations in the policy issued by Truck Insurance Exchange to Climate Source and Pollard Mechanical, Inc. (R. 25)

SUMMARY OF ARGUMENT

The plain terms of the Commercial Auto Insurance Policy issued to Climate Source and Pollard Mechanical, Inc. extends uninsured

motorist coverage only with respect to the use of 14 specifically described "autos" in the policy. The motorcycle being used by Mr. Pollard at the time of the subject accident in this case was admittedly not one of the 14 described "autos" in the Commercial Auto Insurance Policy. Thus, the clear and unambiguous language of the policy at issue does not provide uninsured motorist coverage with respect to Mr. Pollard's use of his personal motorcycle, and therefore the terms of that policy should be enforced as written.

Further, the Utah Uninsured Motorist Statutory Scheme does not require or even allow the additional uninsured motorist coverage being claimed by Mr. Pollard, and there is no basis for him to claim that additional uninsured motorist coverage with respect to the use of his personal motorcycle was his reasonable expectation of the coverage available under the Commercial Auto Insurance Policy.

Therefore, the district court was correct in granting summary judgment in favor of Truck Insurance Exchange, and that ruling should be affirmed by this Court.

ARGUMENT

I.

THE DISTRICT COURT WAS CORRECT IN RULING THAT THE COMMERCIAL AUTO INSURANCE POLICY AT ISSUE SHOULD BE ENFORCED AS WRITTEN, AND THAT UNDER THE CLEAR AND UNAMBIGUOUS LANGUAGE OF THE POLICY, THERE IS NO UNINSURED MOTORIST COVERAGE FOR MR. POLLARD'S USE OF HIS PERSONAL MOTORCYCLE WITH RESPECT TO THE ACCIDENT HE WAS INVOLVED IN ON SEPTEMBER 23, 1997.

The plain terms of the Commercial Auto Insurance Policy issued to Climate Source and Pollard Mechanical, Inc. do not provide for uninsured motorist coverage with respect to Mr. Pollard's use of the motorcycle at the time of the subject accident since Mr. Pollard's personal motorcycle was not described in the subject business auto policy.

A copy of the applicable Business Auto Coverage Form is included in the Addendum. In Section V, at page 9 of the Business Auto Coverage Form, the term "auto" is defined for purposes of all business auto coverages. That definition states as follows:

B. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads but does not include "mobile equipment".

(R. 116; see also Addendum)

Thus, the term "auto", as a defined term in the Commercial Auto Insurance Policy issued to Climate Source and Pollard Mechanical, Inc., includes a motorcycle, as such clearly falls

within the generally accepted meaning of "land motor vehicle". Indeed, the Utah Supreme Court has held that the term "motor vehicle" encompasses both automobiles and motorcycles. Bear River Mutual Ins. Co. v. Wright, 770 P.2d 1019 (Utah App 1989)

Mr. Pollard admits that there are 14 vehicles listed as "covered autos" in the policy, and that the motorcycle ridden by Mr. Pollard at the time of the subject accident is not listed at all in the policy. In addition, he acknowledges that the declaration page of the subject policy states as follows:

This policy provides only those coverages for a charge as shown in the premium column below. Each of these coverages will apply only to those "autos" shown as covered "autos". "Autos" are shown as covered "autos" for a particular coverage by an entry of one or more of the symbols from the COVERED AUTO section of the Business Auto Coverage Form next to the name of the coverage.

(R. 24; see also Addendum)

It is further undisputed that the symbol entered in the column next to Uninsured Motorist coverage in the subject policy indicates that such coverage is only provided with respect to the use of one of the 14 specifically described autos, and that this does not include the motorcycle Mr. Pollard was driving at the time of the accident. (R. 24-26; see also Addendum)

The law regarding the interpretation of insurance policies in Utah is well settled. Such contracts are to be enforced as

written, unless the terms are in violation of a statute or against public policy. See Alf v. State Farm Fire & Casualty Co., 850 P.2d 1272 (Utah 1993), St. Paul Fire & Marine Insurance v. Commercial Union Assurance, 606 P.2d 1206 (Utah 1980). As discussed subsequently in this brief, the terms of the policy are not in violation of any applicable statute, and there is no argument that they are against public policy.

The plain terms of the Commercial Auto Insurance Policy issued to Climate Source and Pollard Mechanical, Inc. clearly do not provide for uninsured motorist coverage with respect to Mr. Pollard's use of the motorcycle at the time of the subject accident. These terms should simply be enforced as written.

In Mr. Pollard's brief, he claims that the fact that Mr. Pollard was not operating a vehicle listed in the policy at the time of the subject accident is "not material" to this declaratory judgment action. (Appellant's Brief, pg. 4) However, it is unknown how Mr. Pollard could arrive at such a conclusion, since that is the very fact that does or does not trigger uninsured motorist coverage under the subject Commercial Auto Insurance Policy.

Further, Mr. Pollard claims that he is not seeking to transfer UM coverage to his motorcycle. (Appellant's Brief, pg. 4) However, that appears to be precisely what Mr. Pollard is

attempting to do in this case, and such is not allowed under the established law in Utah. See, Clark v. State Farm Mutual Automobile Ins. Co., 743 P.2d 1227 (Utah 1987).

In Clark, the decedent was killed by an uninsured motorist who negligently hit the motorcycle he was driving. The deceased had not insured his motorcycle, but had purchased insurance for his car from State Farm. The deceased's family sued State Farm, attempting to collect under an uninsured motorist clause in the insurance policy issued for the car. In holding that the insured could not obtain uninsured motorist coverage on his motorcycle simply by purchasing such coverage on another owned vehicle, the Utah Supreme Court stated as follows:

We do not think that the statute, which merely requires insurers to offer uninsured motorist coverage and authorizes motorists to waive the coverage, evinces a legislative intent to allow an individual to purchase insurance on one vehicle and obtain coverage on all the other vehicles in his household. ...If the legislature had intended to require uninsured motorist coverage only on one vehicle per household, it would have drafted the statute accordingly and would not have required that insurers offer the coverage on all vehicles.

* * *

Thus, coverage was intended to rest with the vehicle and not with the named insured, since owners can opt in favor of uninsured motorist coverage on some vehicles and against it on others.

Id. at 1229 through 1230 (citations omitted).

In the present case, Mr. Pollard had obtained a personal motor vehicle liability insurance policy on the subject motorcycle, under which he has been paid uninsured motorist benefits. However, despite Mr. Pollard's admission that the motorcycle was not a described auto in the commercial policy, and contrary to the Utah Supreme Court's opinion in Clark, Mr. Pollard now claims that he should also be entitled to UM coverage under the commercial policy with respect to his personal use of his motorcycle. Such is contrary to the plain language of the subject commercial policy, and is not supported by the controlling case law and statutory scheme. Thus, Mr. Pollard should not be allowed to unilaterally expand his UM coverage beyond that for which he has contracted and paid a premium.

Since there is no ambiguity in the policy, and since an insured and insurer are free to contract for whatever coverages they do or do not want with respect to the use of any particular vehicle, the Court should enforce the Commercial Auto Insurance Policy, issued by Truck Insurance Exchange, as written, and thus hold that Mr. Pollard is not entitled to uninsured motorist benefits under the terms of that policy for injuries he claims to have sustained as a result of the accident that occurred while he was driving his personal motorcycle on September 23, 1997.

Instead, he is limited to the UM coverage provided by the personal policy on that motorcycle, under which he has already received compensation for his claim.

II.

**UTAH'S UNINSURED MOTORIST STATUTORY SCHEME
DOES NOT REQUIRE OR EVEN ALLOW ADDITIONAL
UNINSURED MOTORIST COVERAGE UNDER THE
COMMERCIAL POLICY WITH RESPECT TO MR.
POLLARD'S USE OF HIS MOTORCYCLE IN THIS CASE.**

The Utah uninsured motorist statutory scheme consists of provisions from both the Automobile Insurance Code (U.C.A. §31A-22-301, et seq.) and the Financial Responsibility Laws (U.C.A. §41-12a-101, et seq.). As part of his argument, Mr. Pollard has made the assertion that "statutory UM coverage is personal and portable". (R. 36) However, such an assertion is without basis for at least two reasons.

First, the phrase "statutory UM coverage" implies that it is the statutes, rather than the policies, which provide coverage. Such is simply not the case. While the statutes may govern the type and limit of coverages that may or must be included in an insurance policy, they do not, in and of themselves, provide coverage. An insurance policy is a contract between the insured and the insurer, wherein the parties have a right to agree to whatever coverages or limitations on coverage they desire, as long

as the agreement is not contrary to statute or public policy.
Farmers Insurance Exchange v. Call, 712 P.2d 231, 233 (Utah 1985)

Second, nowhere in the Utah Uninsured Motorist Statutory Scheme does it state that UM coverage is "personal and portable". Quite to the contrary, the Utah Supreme Court, interpreting the UM statutes under similar circumstances, has held that UM coverage was intended to rest with the vehicle and not with the named insured. Clark v. State Farm Mutual Automobile Insurance Co., supra. Indeed, Clark is controlling on the issue of whether Utah's uninsured motorist statute requires a motor vehicle policy's uninsured motorist provisions to include coverage on a motorcycle which is owned and driven by the insured's family, but is not a vehicle expressly insured by the policy, and for which no premium was paid. 770 P.2d at 1019 through 1020.

With respect to the issue of whether the term "autos" in the subject policy includes motorcycles, it should again be noted that this is a defined term in the policy, and that the definition of "land motor vehicle" has been held to include a motorcycle. See, Bear River Mutual Ins. Co. v. Wright, supra. Thus, there is no need to turn to the statutes to determine the meaning of the term "auto". However, even if a statutory definition were needed, the applicable definition of "motor vehicle" includes motorcycles.

In his brief, plaintiff has incorrectly relied on U.C.A. §41-1a-102 as the applicable definition of "motor vehicle". (Appellant's Brief, pg. 9) However, it should be noted that plaintiff's reliance is misplaced since that definition deals only with the term "motor vehicle" as used in Chapter 1a of the Motor Vehicle Code. The Motor Vehicle Financial Responsibility Act, which is the statute requiring motor vehicle insurance or other types of financial security, is contained in Chapter 12a of the Motor Vehicle Code, which contains its own definition of "motor vehicle". In Section 41-12a-103, it states as follows:

41-12a-103. Definitions.

As used in this chapter:

(4)(a) "Motor vehicle" means every self-propelled vehicle that is designed for use upon a highway, including trailers and semi-trailers designed for use with other motorized vehicles.

* * *

U.C.A. §41-12a-103 (1993).

Mr. Pollard, in complying with the financial responsibility laws and the Motor Vehicle Insurance Code, purchased a motor vehicle liability policy on the subject motorcycle, which he was using on a public highway at the time of the subject accident. That policy on the motorcycle contained uninsured motorist coverage, which has been paid out to Mr. Pollard.

In addition, with respect to the business vehicles Mr. Pollard had purchased through Climate Source and Pollard Mechanical, Inc., the Financial Responsibility Law had also been complied with through the purchase of the subject Commercial Auto Insurance Policy, providing business auto coverage for 14 listed vehicles used in those businesses, admittedly not including the subject motorcycle. This business auto policy also contained uninsured motorist coverage in connection with the use of any one of those 14 vehicles described in the policy.

Based on the fact that Mr. Pollard is considered an insured under the Commercial Auto Insurance Policy issued to Climate Source and Pollard Mechanical, Inc., he now argues that he should be entitled to stack or substitute the UM coverage provided on his business "autos" with the UM coverage provided on his personal motorcycle. However, such stacking or substitution is prohibited under the circumstances of this case, based on very specific provisions in the insurance code dealing with such a situation.

Utah Code Annotated §§31A-22-305(6) and (7) prohibit the type of stacking or substitution proposed by Mr. Pollard in this case. The applicable portions of those subsections in the statute state as follows:

31A-22-305. Uninsured and underinsured motorist coverage.

* * *

(6)(a) The limit of liability for uninsured motorist coverage for two or more motor vehicles may not be added together, combined, or stacked to determine the limit of insurance coverage available to an injured person for any one accident.

(b)(i) Subsection (6)(a) applies to all persons except a covered person as defined under subsection (7)(b)(ii).

* * *

(7)(a) Uninsured motorist coverage under this section applies to bodily injury, sickness, disease, or death of covered persons while occupying or using a motor vehicle only if the motor vehicle is described in the policy under which a claim is made, or if the motor vehicle is a newly acquired or replacement vehicle covered under the terms of the policy. Except as provided in subsection (6) or (7), a covered person injured in a vehicle described in a policy that includes uninsured motorist benefits may not elect to collect uninsured motorist coverage benefits from any other motor vehicle insurance policy under which he is a covered person.

(b) Each of the following persons may also recover uninsured motorist benefits under any other policy in which they are described as a "covered person" as defined in subsection (1):

(i) A covered person injured as a pedestrian by an uninsured motor vehicle; and

(ii) A covered person injured while occupying or using a motor vehicle that is not owned by, furnished, or available for the regular use of the covered person, the covered person's resident spouse, or the covered person's resident relative.

* * *

U.C.A. §§31A-22-305(6) and (7) (1997) (Emphasis added).

Plaintiff has argued that there is an internal statutory inconsistency between these subsections of the statute and subsections (1), (2), and (3). (R. 38) However, there is no such inconsistency. Instead, while the first three subsections deal with UM coverage in general, these later subsections deal more specifically with situations such as that being presented in the present case, where there is an effort to stack or substitute UM coverages for two or more vehicles. These statutory provisions are consistent and valid as written, and plaintiff has cited no authority to the contrary.

Thus, in this case, where Mr. Pollard was not injured as a pedestrian, or while occupying or using a motor vehicle that was not owned or furnished or available for his regular use, but was instead injured while using an owned motor vehicle not described in the subject commercial policy, he is limited to recovering only

through the UM coverage provided under the policy on that motor vehicle. He is not entitled to stack or substitute the UM coverage which had been provided under the commercial policy on the business vehicles described in that policy.

III.

THE REASONABLE EXPECTATIONS CONCEPT IS NOT APPLICABLE AND DOES NOT CREATE ADDITIONAL UM COVERAGE FOR MR. POLLARD UNDER THE COMMERCIAL POLICY.

Through his affidavit, Mr. Pollard has implied an argument that he is somehow entitled to the UM coverage under the commercial policy based on a "reasonable expectations concept". (Appellant's Brief, pg. 3, ¶3) However, it is not reasonable for Mr. Pollard to have expected to recover UM benefits under the commercial policy in addition to those benefits he has already recovered under the policy provided on the motorcycle he was driving at the time of the subject accident. As stated by the Utah Court of Appeals in the case of Wagner v. Farmers Insurance Exchange, 786 P.2d 763, 766 (Utah App 1990):

The reasonable expectations concept is quite troublesome, since most insureds develop a "reasonable expectation" that every loss will be covered by their policy.

* * *

Therefore, in making a judicial determination of such expectations, we examine the following inter-related factors: First,

whether the insurer knew or should have known of the insured's expectations; second, whether the insurer created or helped to create these expectations; and third, whether the insured's expectations are reasonable. To accomplish this determination, we examine, in addition to the wording of the contract, "extrinsic matters such as the intent of the parties, the purpose sought to be accomplished, the subject matter of the contract, and circumstances surrounding the issuance of the policy."

In the present case, there is no evidence that Truck Insurance Exchange knew or should have known of Mr. Pollard's alleged expectations to have UM coverage under the commercial policy with respect to the use of his personal motorcycle, in addition to the UM coverage provided by the personal policy on the motorcycle. Second, there is also no evidence that Truck Insurance Exchange created or helped to create such alleged expectations. Finally, such expectations would not be reasonable since the obvious intent of purchasing the business auto policy, and its associated UM coverage, was to provide coverage for use of the specifically described business autos, not Mr. Pollard's personal motorcycle.

CONCLUSION


The plain language of the Commercial Auto Insurance Policy at issue does not provide uninsured motorist coverage with respect to Mr. Pollard's use of his personal motorcycle, and thus the terms of that policy should be enforced as written. The Utah Uninsured Motorist Statutory Scheme does not require or even allow the

additional UM coverage being claimed by Mr. Pollard, and there is no basis for claiming that such coverage was his reasonable expectation.

Thus, based on the foregoing arguments and authorities, defendant/appellee Truck Insurance Exchange respectfully requests that this Court affirm the trial court's summary judgment entered in its favor, ruling that Mr. Pollard is not entitled to UM coverage under the Commercial Auto Insurance Policy issued to Climate Source and Pollard Mechanical, Inc. with respect to the motorcycle accident he was involved in on September 23, 1997.

Respectfully submitted this 11th day of August, 2000.

NELSON, CHIPMAN, QUIGLEY & HANSEN


Attorneys for Defendant/Appellee

CERTIFICATE OF SERVICE

I hereby certify that I hand-delivered an original and seven (7) copies of the foregoing **BRIEF OF DEFENDANT/APPELLEE TRUCK INSURANCE EXCHANGE** to the Clerk of the Utah Court of Appeals, 450 South State Street, Salt Lake City, Utah, and I further certify that two (2) copies were mailed to the Plaintiff/Appellant's attorney in this matter: Edward M. Garrett, GARRETT & GARRETT, 2091 East 1300 South, Suite 201, Salt Lake City, Utah 84108, this 11th day of August, 2000.


Attorney

A D D E N D U M

**BUSINESS
AUTO
DECLARATIONS
POLICY**

☒ **COVERAGE PART**

☒ **TRUCK INSURANCE** ☐ **RANGE** ☐ **MID-CENTURY INSURANCE COMP/** ☐ **FARMERS INSURANCE EXCHANGE**

MEMBERS OF FARMERS INSURANCE GROUP OF COMPANIES

HOME OFFICE: 4000 WILSHIRE BLVD., LOS ANGELES, CALIFORNIA 90010

ITEM ONE

NAMED INSURED: CLIMATE SOURCE & POLLARD
MECHANICAL INC
MAILING ADDRESS: 4020 SO 210 W
SALT LAKE CITY UT 84107

3560034

Prematic Acc't No.

76-13-358

Agent

Prod. Count

06590-13-39

Policy Number

The named insured is an individual unless otherwise stated:

☐ Partnership

☐ Joint Venture

☒ Corp.

☐ Organization (Other than Partnership or joint venture)

Type of Business

HEATING & A/C

Policy Period from 07/14/97 **(not prior to time applied for) to** 07/14/98 **12:01 AM Standard Time**

If this policy replaces other coverages that end at noon standard time on the same day this policy begins, this policy will not take effect until the coverage ends. This policy will continue for successive policy periods as follows: if we elect to continue this insurance, we will renew this policy if you the required renewal premium for each successive policy period subject to our premiums, rules and forms then in effect.

ITEM TWO SCHEDULE OF COVERAGES AND COVERED AUTOS

"This policy provides only those coverages where a charge is shown in the premium column below. Each of these coverages will apply only to those "autos" as covered "autos". "Autos" are shown as covered "autos" for a particular coverage by the entry of one or more of the symbols from the COVERED AUTO Section of the Business Auto Coverage Form next to the name of the coverage.

COVERAGES	* COVERED AUTOS	LIMIT THE MOST WE WILL PAY FOR ANY ONE ACCIDENT OR LOSS (LIMITS SHOWN IN THOUSANDS)	PREMIUM
LIABILITY	2 8 9	\$ 1000	6,662.00
PERSONAL INJURY PROTECTION (or equivalent No-Fault Coverage)	5	SEPARATELY STATED IN EACH PIP ENDORSEMENT	86.00
ADDED PERSONAL INJURY PROTECTION (or equivalent added no-fault cov.)		SEPARATELY STATED IN EACH ADDED PIP ENDORSEMENT	
PROPERTY PROTECTION INSURANCE (Michigan only)		SEPARATELY STATED IN THE P.P.I. ENDORSEMENT MINUS \$ DEDUCTIBLE FOR EACH ACCIDENT	
AUTO MEDICAL PAYMENTS		\$ SEE SCHEDULE	
UNINSURED MOTORIST	7	\$ 1000	195.00
UNINSURED MOTORIST PROPERTY DAMAGE		\$	
UNDERINSURED MOTORISTS (When not incl. in Uninsured Motorists Coverage)	7	\$ 1000	1,092.00
PHYSICAL DAMAGE COMPREHENSIVE COVERAGE	7	Actual Cash Value or Cost of Repair, whichever is less minus \$ SEE SCHEDULE Ded. for Each Covered Auto. But no Deductible Applies to Loss Caused by Fire or Lightning. See Item Four for hired or borrowed "autos".	569.00
PHYSICAL DAMAGE SPECIFIED CAUSES OF LOSS COVERAGE	7	Actual Cash Value or Cost of Repair, whichever is Less Minus \$25 Ded. for Each Covered Auto for loss Caused by Mischief or Vandalism. See Item Four for hired or borrowed "Autos".	8.00
PHYSICAL DAMAGE COLLISION COVERAGE	7	Actual Cash Value or Cost of Repair whichever is less minus \$ SEE SCHEDULE Ded. for Each Covered Auto. See Item four for hired or borrowed "Autos".	923.00
PHYSICAL DAMAGE TOWING AND LABOR		\$ for each disablement of a private passenger "auto." (ACTUAL LIMIT)	
PREMIUM FOR ENDORSEMENTS			
ESTIMATED TOTAL PREMIUM			9,535.00



BUSINESS AUTO COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we," "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION V - DEFINITIONS.

SECTION I - COVERED AUTOS

ITEM TWO of the Declarations shows the "autos" that are covered "autos" for each of your coverages. The following numerical symbols describe the "autos" that may be covered "autos." The symbols entered next to a coverage on the Declarations designate the only "autos" that are covered "autos."

A. DESCRIPTION OF COVERED AUTO DESIGNATION SYMBOLS

SYMBOL	DESCRIPTION
1 = ANY "AUTO."	
2 = OWNED "AUTOS" ONLY. Only those "autos" you own (and for Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" you acquire ownership of after the policy begins.	
3 = OWNED PRIVATE PASSENGER "AUTOS" ONLY. Only the private passenger "autos" you own. This includes those private passenger "autos" you acquire ownership of after the policy begins.	
4 = OWNED "AUTOS" OTHER THAN PRIVATE PASSENGER "AUTOS" ONLY. Only those "autos" you own that are not of the private passenger type (and for Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" not of the private passenger type you acquire ownership of after the policy begins.	
5 = OWNED "AUTOS" SUBJECT TO NO-FAULT. Only those "autos" you own that are required to have No-Fault benefits in the state where they are licensed or principally garaged. This includes those "autos" you acquire ownership of after the policy begins provided they are required to have No-Fault benefits in the state where they are licensed or principally garaged.	
6 = OWNED "AUTOS" SUBJECT TO A COMPULSORY UNINSURED MOTORISTS LAW. Only those "autos" you own that because of the law in the state where they are licensed or principally garaged are required to have and cannot reject Uninsured Motorists Coverage. This includes those "autos" you acquire ownership of after the policy begins provided they are subject to the same state uninsured motorists requirement.	
7 = SPECIFICALLY DESCRIBED "AUTOS." Only those "autos" described in ITEM THREE of the Declarations for which a premium charge is shown (and for Liability Coverage any "trailers" you don't own while attached to any power unit described in ITEM THREE).	
8 = HIRED "AUTOS" ONLY. Only those "autos" you lease, hire, rent or borrow. This does not include any "auto" you lease, hire, rent, or borrow from any of your employees or partners or members of their households.	
9 = NONOWNED "AUTOS" ONLY. Only those "autos" you do not own, lease, hire, rent or borrow that are used in connection with your business. This includes "autos" owned by your employees or partners or members of their households but only while used in your business or your personal affairs.	

B. OWNED AUTOS YOU ACQUIRE AFTER THE POLICY BEGINS

1. If symbols 1, 2, 3, 4, 5 or 6 are entered next to a coverage in ITEM TWO of the Declarations, then you have coverage for "autos" that you acquire of the type described for the remainder of the policy period.

2. But, if symbol 7 is entered next to a coverage in ITEM TWO of the Declarations, an "auto" you acquire will be a covered "auto" for that coverage only if:
 - a. We already cover all "autos" that you own for that coverage or it replaces an "auto" you previously owned that had that coverage; and
 - b. You tell us within 30 days after you acquire it that you want us to cover it for that coverage.

C: CERTAIN TRAILERS, MOBILE EQUIPMENT AND TEMPORARY SUBSTITUTE AUTOS

If Liability Coverage is provided by this Coverage Form, the following types of vehicles are also covered "autos" for Liability Coverage:

1. "Trailers" with a load capacity of 2,000 pounds or less designed primarily for travel on public roads.

SECTION II - LIABILITY COVERAGE

A. COVERAGE

We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto."

We will also pay all sums an "insured" legally must pay as a "covered pollution cost or expense" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of covered "autos." However, we will only pay for the "covered pollution cost or expense" if there is either "bodily injury" or "property damage" to which this insurance applies that is caused by the same "accident."

We have the right and duty to defend any "suit" asking for such damages or a "covered pollution cost or expense." However, we have no duty to defend "suits" for "bodily injury" or "property damage" or a "covered pollution cost or expense" not covered by this Coverage Form. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

2. "Mobile equipment" while being carried or towed by a covered "auto."
3. Any "auto" you do not own while used with the permission of its owner as a temporary substitute for a covered "auto" you own that is out of service because of its:
 - a. Breakdown;
 - b. Repair;
 - c. Servicing;
 - d. "Loss"; or
 - e. Destruction.

1. WHO IS AN INSURED

The following are "insureds":

- a. You for any covered "auto."
- b. Anyone else while using with your permission a covered "auto" you own, hire or borrow except:
 - (1) The owner or anyone else from whom you hire or borrow a covered "auto." This exception does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.
 - (2) Your employee if the covered "auto" is owned by that employee or a member of his or her household.
 - (3) Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing or parking "autos" unless that business is yours.
 - (4) Anyone other than your employees, partners, a lessee or borrower or any of their employees, while moving property to or from a covered "auto."
 - (5) A partner of yours for a covered "auto" owned by him or her or a member of his or her household.

- c. Anyone liable for the conduct of an "insured" described above but only to the extent of that liability.

2. COVERAGE EXTENSIONS

- a. **Supplementary Payments.** In addition to the Limit of Insurance, we will pay for the "insured":

- (1) All expenses we incur.
- (2) Up to \$250 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (3) The cost of bonds to release attachments in any "suit" we defend, but only for bond amounts within our Limit of Insurance.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earning up to \$100 a day because of time off from work.
- (5) All costs taxed against the "insured" in any "suit" we defend.
- (6) All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" we defend; but our duty to pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.

- b. **Out-of-State Coverage Extensions.**

While a covered "auto" is away from the state where it is licensed we will:

- (1) Increase the Limit of Insurance for Liability Coverage to meet the limits specified by a compulsory or financial responsibility law of the jurisdiction where the covered "auto" is being used. This extension does not apply to the limit or limits specified by any law governing motor carriers of passengers or property.
- (2) Provide the minimum amounts and types of other coverages, such as no-fault, required of out-of-state vehicles by the jurisdiction where the covered "auto" is being used.

We will not pay anyone more than once for the same elements of loss because of these extensions.

B. EXCLUSIONS

This insurance does not apply to any of the following:

1. EXPECTED OR INTENDED INJURY

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured."

2. CONTRACTUAL

Liability assumed under any contract or agreement.

But this exclusion does not apply to liability for damages:

- a. Assumed in a contract or agreement that is an "insured contract" provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or
- b. That the "insured" would have in the absence of the contract or agreement.

3. WORKERS' COMPENSATION

Any obligation for which the "insured" or the "insured's" insurer may be held liable under any workers' compensation, disability benefits or unemployment compensation law or any similar law.

4. EMPLOYEE INDEMNIFICATION AND EMPLOYER'S LIABILITY

"Bodily injury" to:

- a. An employee of the "insured" arising out of and in the course of employment by the "insured"; or
- b. The spouse, child, parent, brother or sister of that employee as a consequence of paragraph a. above.

This exclusion applies:

- (1) Whether the "insured" may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

But this exclusion does not apply to "bodily injury" to domestic employees not entitled to workers' compensation benefits or to liability assumed by the "insured" under an "insured contract."

5. FELLOW EMPLOYEE

"Bodily injury" to any fellow employee of the "insured" arising out of and in the course of the fellow employee's employment.

6. CARE, CUSTODY OR CONTROL

"Property damage" to or "covered pollution cost or expense" involving property transported by the "insured" or in the "insured's" care, custody or control. But this exclusion does not apply to liability assumed under a sidetrack agreement.

7. HANDLING OF PROPERTY

"Bodily injury" or "property damage" resulting from the handling of property:

- a. Before it is moved from the place where it is accepted by the "insured" for movement into or onto the covered "auto"; or
- b. After it is moved from the covered "auto" to the place where it is finally delivered by the "insured."

8. MOVEMENT OF PROPERTY BY MECHANICAL DEVICE

"Bodily injury" or "property damage" resulting from the movement of property by a mechanical device (other than a hand truck) unless the device is attached to the covered "auto."

9. OPERATIONS

"Bodily injury" or "property damage" arising out of the operation of any equipment listed in paragraphs 6.b. and 6.c. of the definition of "mobile equipment."

10. COMPLETED OPERATIONS

"Bodily injury" or "property damage" arising out of your work after that work has been completed or abandoned.

In this exclusion, your work means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

Your work includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in paragraphs a. or b. above.

Your work will be deemed completed at the earliest of the following times:

- (1) When all of the work called for in your contract has been completed.
- (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.
- (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

11. POLLUTION

"Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. That are, or that are contained in any property that is:

- (1) Being transported or towed by, handled, or handled for movement into, onto or from, the covered "auto";
- (2) Otherwise in the course of transit by or on behalf of the "insured"; or
- (3) Being stored, disposed of, treated or processed in or upon the covered "auto";

- b. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or

- c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured."

Paragraph a. above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if:

- (1) The "pollutants" escape, seep, migrate, or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- (2) The "bodily injury," "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in paragraphs 6.b. and 6.c. of the definition of "mobile equipment."

Paragraphs b. and c. above of this exclusion do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and

- (2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

12. WAR

"Bodily injury" or "property damage" due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.

C. LIMIT OF INSURANCE

Regardless of the number of covered "autos," "insureds," premiums paid, claims made or vehicles involved in the "accident," the most we will pay for the total of all damages and "covered pollution cost or expense" combined, resulting from any one "accident" is the Limit of Insurance for Liability Coverage shown in the Declarations.

All "bodily injury," "property damage" and "covered pollution cost or expense" resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one "accident."

SECTION III - PHYSICAL DAMAGE COVERAGE

A. COVERAGE

1. We will pay for "loss" to a covered "auto" or its equipment under:

a. Comprehensive Coverage. From any cause except:

- (1) The covered "auto's" collision with another object; or
- (2) The covered "auto's" overturn.

b. Specified Causes of Loss Coverage. Caused by:

- (1) Fire, lightning or explosion;
- (2) Theft;
- (3) Windstorm, hail or earthquake;
- (4) Flood;
- (5) Mischief or vandalism; or
- (6) The sinking, burning, collision or derailment of any conveyance transporting the covered "auto."

c. Collision Coverage. Caused by:

- (1) The covered "auto's" collision with another object; or

- (2) The covered "auto's" overturn.

2. Towing.

We will pay up to the limit shown in the Declarations for towing and labor costs incurred each time a covered "auto" of the private passenger type is disabled. However, the labor must be performed at the place of disablement.

3. Glass Breakage - Hitting a Bird or Animal - Falling Objects or Missiles.

If you carry Comprehensive Coverage for the damaged covered "auto," we will pay for the following under Comprehensive Coverage:

- a. Glass breakage;
- b. "Loss" caused by hitting a bird or animal; and
- c. "Loss" caused by falling objects or missiles.

However, you have the option of having glass breakage caused by a covered "auto's" collision or overturn considered a "loss" under Collision Coverage.

4. Coverage Extension. We will pay up to \$15 per day to a maximum of \$450 for transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss."

B. EXCLUSIONS

1. We will not pay for "loss" caused by or resulting from any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss."

a. Nuclear Hazard.

- (1) The explosion of any weapon employing atomic fission or fusion; or
- (2) Nuclear reaction or radiation, or radioactive contamination, however caused.

b. War or Military Action.

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

2. Other Exclusions.

- a. We will not pay for "loss" to any of the following:

- (1) Tape decks or other sound reproducing equipment unless permanently installed in a covered "auto."

- (2) Tapes, records or other sound reproducing devices designed for use with sound reproducing equipment.

- (3) Sound receiving equipment designed for use as a citizens' band radio, two-way mobile radio or telephone or scanning monitor receiver, including its antennas and other accessories, unless permanently installed in the dash or console opening normally used by the "auto" manufacturer for the installation of a radio.

- (4) Equipment designed or used for the detection or location of radar.

- b. We will not pay for "loss" caused by or resulting from any of the following unless caused by other "loss" that is covered by this insurance:

- (1) Wear and tear, freezing, mechanical or electrical breakdown.

- (2) Blowouts, punctures or other road damage to tires.

C. LIMIT OF INSURANCE

The most we will pay for "loss" in any one "accident" is the lesser of:

1. The actual cash value of the damaged or stolen property as of the time of the "loss"; or
2. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

D. DEDUCTIBLE

For each covered "auto," our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations. Any Comprehensive Coverage deductible shown in the Declarations does not apply to "loss" caused by fire or lightning.

SECTION IV - BUSINESS AUTO CONDITIONS

The following conditions apply in addition to the Common Policy Conditions:

A. LOSS CONDITIONS

1. APPRAISAL FOR PHYSICAL DAMAGE LOSS

If you and we disagree on the amount of "loss," either may demand an appraisal of the "loss." In this event, each party will select a competent appraiser. The two appraisers will select a competent and impartial umpire. The appraisers will state separately the actual cash value and amount of "loss." If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If we submit to an appraisal, we will still retain our right to deny the claim.

2. DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS

- a. In the event of "accident," claim, "suit" or "loss," you must give us or our authorized representative prompt notice of the "accident" or "loss." Include:

- (1) How, when and where the "accident" or "loss" occurred;
- (2) The "insured's" name and address; and
- (3) To the extent possible, the names and addresses of any injured persons and witnesses.

- b. Additionally, you and any other involved "insured" must:

- (1) Assume no obligation, make no payment or incur no expense without our consent, except at the "insured's" own cost.
- (2) Immediately send us copies of any request, demand, order, notice, summons or legal paper received concerning the claim or "suit."
- (3) Cooperate with us in the investigation, settlement or defense of the claim or "suit."

- (4) Authorize us to obtain medical records or other pertinent information.

- (5) Submit to examination, at our expense, by physicians of our choice, as often as we reasonably require.

- c. If there is "loss" to a covered "auto" or its equipment you must also do the following:

- (1) Promptly notify the police if the covered "auto" or any of its equipment is stolen.

- (2) Take all reasonable steps to protect the covered "auto" from further damage. Also keep a record of your expenses for consideration in the settlement of the claim.

- (3) Permit us to inspect the covered "auto" and records proving the "loss" before its repair or disposition.

- (4) Agree to examinations under oath at our request and give us a signed statement of your answers.

3. LEGAL ACTION AGAINST US

No one may bring a legal action against us under this Coverage Form until:

- a. There has been full compliance with all the terms of this Coverage Form; and
- b. Under Liability Coverage, we agree in writing that the "insured" has an obligation to pay or until the amount of that obligation has finally been determined by judgment after trial. No one has the right under this policy to bring us into an action to determine the "insured's" liability.

4. LOSS PAYMENT - PHYSICAL DAMAGE COVERAGES

At our option we may:

- a. Pay for, repair or replace damaged or stolen property;
- b. Return the stolen property, at our expense. We will pay for any damage that results to the "auto" from the theft; or
- c. Take all or any part of the damaged or stolen property at an agreed or appraised value.

5. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them.

B. GENERAL CONDITIONS

1. BANKRUPTCY

Bankruptcy or insolvency of the "insured" or the "insured's" estate will not relieve us of any obligations under this Coverage Form.

2. CONCEALMENT, MISREPRESENTATION OR FRAUD

This Coverage Form is void in any case of fraud by you at any time as it relates to this Coverage Form. It is also void if you or any other "insured," at any time, intentionally conceal or misrepresent a material fact concerning:

- a. This Coverage Form;
- b. The covered "auto";
- c. Your interest in the covered "auto"; or
- d. A claim under this Coverage Form.

3. LIBERALIZATION

If we revise this Coverage Form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

4. NO BENEFIT TO BAILEE - PHYSICAL DAMAGE COVERAGES

We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this Coverage Form.

5. OTHER INSURANCE

a. For any covered "auto" you own, this Coverage Form provides primary insurance. For any covered "auto" you don't own, the insurance provided by this Coverage Form is excess over any other collectible insurance. However, while a covered "auto" which is a "trailer" is connected to another vehicle, the Liability Coverage this Coverage Form provides for the "trailer" is:

- (1) Excess while it is connected to a motor vehicle you do not own.
- (2) Primary while it is connected to a covered "auto" you own.

b. For Hired Auto Physical Damage Coverage, any covered "auto" you hire or borrow is deemed to be a covered "auto" you own.

c. Regardless of the provisions of paragraph a. above, this Coverage Form's Liability Coverage is primary for any liability assumed under an "insured contract."

d. When this Coverage Form and any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

6. PREMIUM AUDIT

a. The estimated premium for this Coverage Form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the first Named Insured will be billed for the balance, if any. If the estimated total premium exceeds the final premium due, the first Named Insured will get a refund.

b. If this policy is issued for more than one year, the premium for this Coverage Form will be computed annually based on our rates or premiums in effect at the beginning of each year of the policy.

7. POLICY PERIOD, COVERAGE TERRITORY

Under this Coverage Form, we cover "accidents" and "losses" occurring:

- a. During the policy period shown in the Declarations; and
- b. Within the coverage territory.

The coverage territory is:

- a. The United States of America;
- b. The territories and possessions of the United States of America;
- c. Puerto Rico; and
- d. Canada.

We also cover "loss" to, or "accidents" involving, a covered "auto" while being transported between any of these places.

8. TWO OR MORE COVERAGE FORMS OR POLICIES ISSUED BY US

If this Coverage Form and any other Coverage Form or policy issued to you by us or any company affiliated with us apply to the same "accident," the aggregate maximum Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable Limit of Insurance under any one Coverage Form or policy. This condition does not apply to any Coverage Form or policy issued by us or an affiliated company specifically to apply as excess insurance over this Coverage Form.

SECTION V - DEFINITIONS

A. "Accident" includes continuous or repeated exposure to the same conditions resulting in "bodily injury" or "property damage."

B. "Auto" means a land motor vehicle, trailer or semitrailer designed for travel on public roads but does not include "mobile equipment."

C. "Bodily injury" means bodily injury, sickness or disease sustained by a person including death resulting from any of these.

D. "Covered pollution cost or expense" means any cost or expense arising out of:

- 1. Any request, demand or order; or
- 2. Any claim or "suit" by or on behalf of a governmental authority demanding

that the "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants."

"Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. That are, or that are contained in any property that is:

- (1) Being transported or towed by, handled, or handled for movement into, onto or from the covered "auto";

- (2) Otherwise in the course of transit by or on behalf of the "insured";

- (3) Being stored, disposed of, treated or processed in or upon the covered "auto"; or

- b. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or

- c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured."

Paragraph a. above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if:

- (1) The "pollutants" escape, seep, migrate, or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and

- (2) The "bodily injury," "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in paragraphs 6.b. or 6.c. of the definition of "mobile equipment."

Paragraphs b. and c. above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
- (2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

E. "Insured" means any person or organization qualifying as an insured in the Who Is An Insured provision of the applicable coverage. Except with respect to the Limit of Insurance, the coverage afforded applies separately to each insured who is seeking coverage or against whom a claim or "suit" is brought.

F. "Insured contract" means:

1. A lease of premises;
2. A sidetrack agreement;
3. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
4. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
5. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another to pay for "bodily injury" or "property damage" to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
6. That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your employees, of any "auto." However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your employees to pay for "property damage" to any "auto" rented or leased by you or any of your employees.

An "insured contract" does not include that part of any contract or agreement:

- a. That indemnifies any person or organization for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing; or
- b. That pertains to the loan, lease or rental of an "auto" to you or any of your employees, if the "auto" is loaned, leased or rented with a driver; or
- c. That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of a covered "auto" over a route or territory that person or organization is authorized to serve by public authority.

G. "Loss" means direct and accidental loss or damage.

H. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

1. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
2. Vehicles maintained for use solely on or next to premises you own or rent;
3. Vehicles that travel on crawler treads;
4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - a. Power cranes, shovels, loaders, diggers or drills; or
 - b. Road construction or resurfacing equipment such as graders, scrapers or rollers.
5. Vehicles not described in paragraphs 1., 2., 3., or 4. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - a. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - b. Cherry pickers and similar devices used to raise or lower workers.

6. Vehicles not described in paragraphs 1., 2., 3. or 4. above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
- a. Equipment designed primarily for:
 - (1) Snow removal;
 - (2) Road maintenance, but not construction or resurfacing; or
 - (3) Street cleaning;
 - b. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - c. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting or well servicing equipment.
- I. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- J. "Property damage" means damage to or loss of use of tangible property.
- K. "Suit" means a civil proceeding in which damages because of "bodily injury," "property damage," or "covered pollution cost or expense," to which this insurance applies are alleged. "Suit" includes an arbitration proceeding alleging such damages or "covered pollution cost or expense" to which you must submit or submit with our consent.
- L. "Trailer" includes semitrailer.